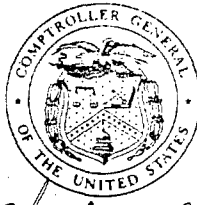


DECISION



13307  
11M-2  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

*[Request for Reimbursement of Temporary Quarters Subsistence Expenses]*

FILE: B-195866

DATE: April 2, 1980

MATTER OF: John M. Mankat

DIGEST: Employee may not be reimbursed for temporary quarters of family where they remain at new duty station less than 1 week and return to and occupy former residence. Although family's return was due to uncertainties regarding date for sale of residence at old duty station, record does not provide objective evidence of intent to vacate former residence so as to entitle employee to temporary quarters under FTR para. 2-5.2c.

4 Virginia G. Leist, an Authorized Certifying Officer of the Internal Revenue Service (IRS), requests an advance decision on whether John M. Mankat's reclaim voucher of \$279.79 for 5-1/2 days of temporary quarters subsistence expenses (TQSE) for his family may be certified for payment. The voucher may not be certified because Mr. Mankat's family did not vacate the old residence at his former duty station.

Incident to a permanent change of duty station from Cincinnati, Ohio, to Louisville, Kentucky, Mr. Mankat, an employee of the IRS, was authorized 30 days of TQSE for himself and his family. Mr. Mankat and his family occupied temporary quarters at his new duty station commencing on July 17, 1977. The claimant's family remained with him until July 22, 1977, when they returned to their former permanent residence at Xenia, Ohio. They remained there until August 12, 1977, when their new permanent residence in the Louisville area was available for their occupancy.

When Mr. Mankat submitted his voucher for reimbursement of his and his family's TQSE for the period July 17 to August 11, 1977, the IRS did not pay him for any expenses for the July 17 to July 22 period. Mr. Mankat then filed his first reclaim voucher with a written explanation of why his family had returned to the former

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residence. Basically, it was caused by the uncertainty of the situation when the family left. Both Mr. Mankat and the buyer of his house had contingent sales contracts on new residences. The contingencies were that they had to sell their former residences. Thus, Mr. Mankat was unsure of the closing dates for sale of his residence at Xenia and for purchase of his new residence at Louisville, although the sales contract for the Xenia residence specified a closing date no later than August 1977. (Mr. Mankat's explanation incorrectly stated August 1978; however, he satisfactorily explained his error in a later memorandum.) Mr. Mankat hoped for an early or middle August closing for the Xenia residence because his insurance would lapse after the residence was vacant for 30 days. When he learned during the first week of his stay in Louisville that the closing would not be until the latter part of August, he sent his family home so as to avoid storage charges or potential vandalism.

Upon receipt of the explanation and first reclaim voucher, Ms. Leist requested a legal opinion from the IRS Regional Counsel. The Counsel issued an opinion which essentially held that the factual situation was indicative of the claimant's family not having the requisite intent to vacate the residence. Based on this, for July 17 to 22 the TQSE expenses of \$279.79 for his family were denied but Mr. Mankat's expenses of \$117 were allowed. These events prompted Mr. Mankat to file the second reclaim voucher of \$279.79.

The reimbursement to employees of the expense of occupying temporary quarters incident to a transfer of duty station is governed by the provisions of part 2-5 of the Federal Travel Regulations (FTR), FPMR 101-7 (May 1973). The question here is whether Mr. Mankat's family may be considered to have "vacated the residence quarters in which they were residing at the time the transfer was authorized" as required by FTR para. 2-5.2c as a condition of entitlement to reimbursement for temporary quarters.

There is no precise definition of the term "vacate" in the travel regulations and each case must be considered

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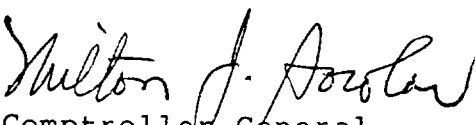
on its own merits. 47 Comp. Gen. 84 (1967); B-181032, August 19, 1974. We generally consider a residence to be vacated when an employee and/or his family cease to occupy it for the purposes intended. B-185696, May 28, 1976. In evaluating such cases, we have consistently given great weight to the intent of the employee with respect to the location of permanent residence and the occupancy of temporary quarters. In those cases where there is evidence of action taken by the employee prior to and/or after departure from the former residence which support an inference that the employee intended to cease occupancy of that residence, we generally have authorized reimbursement. See, e.g., B-185696, supra, and cases cited therein. Conversely, we have not approved reimbursement for temporary quarters where such evidence is absent. B-162680, November 3, 1967; B-173217, July 13, 1971.

The record does not support Mr. Mankat's contention that his family intended to vacate the residence. Indeed, the basic facts are that the family left a fully furnished residence unsure of when it would be sold or when they could move into a new residence. Upon verification of a late August closing date, the family returned to save storage costs and deter potential vandalism.

We concur with the conclusion of the IRS Regional Counsel that these facts do not support the inference that the claimant's family took steps prior to or after departure from the residence to cease occupancy. Rather, these facts create the inference that the claimant had taken steps to allow his family to continue their residency, if necessary. In reaching this conclusion, we have considered Mr. Mankat's further explanation that he kept his furniture at his old residence because it would save the Government money (he could have been authorized temporary storage) and because it would be more efficient to have only one direct move of his household effects as opposed to a move into storage and then a subsequent one out of storage. However, this does not adequately counter the necessary inference that the claimant did not have his family vacate the former residence.

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Accordingly, the reclaim voucher of \$279.79 may not be certified for payment.

  
For the Comptroller General  
of the United States